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For
REPLY COMMENTS OF WKJCE RADIO
In
FCC DOCKET NO. MM 99-25

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UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
The Portals
445 12th Street S.W.
WASHINGTON, DC 20554

In The Matter Of:)	Docket No. MM 99-25
)	
Creation Of A)	Docket No. RM-9208;
Low Power Radio Service)	Docket No. RM-9242

REPLY COMMENTS OF WKJCE RADIO

WKJCE Radio is the name of an enterprise which plans to own and operate a licensed Low Power Radio station in Western Pennsylvania. It is a partnership of two people: John Robert Benjamin, who also serves as Communications Director of THE AMHERST ALLIANCE, and Charles Coplien.

WKJCE will serve listeners in the mountains, forests and small towns which grace our corner of Forest /Clarion County. Despite Pennsylvania's reputation as an urban state, our own area -- like much of the rest of Pennsylvania -- is rural. Here we have a shortage of STATIONS, not a shortage of spectrum.

There is a clear need for community-oriented Low Power Radio in this area. WKJCE hopes and plans to obtain an FCC license to meet that need.

These Reply Comments are mainly a response to Written Comments filed by the NAB, NPR and CPB. We also second certain points made in filings by The Amherst Alliance, Don Schellhardt, the Leggetts and REC Networks.

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FCC NUMBERS PROVE POWER CEILINGS SHOULD VARY WITH GEOGRAPHY

We believe that LP-100 should be the general standard for Low Power Radio stations in or near large urban areas. However, WKJCE also believes that power levels above 100 watts make sense in some small cities -- and in rural areas, such as ours.

In this regard, we endorse the assertion of The Amherst Alliance, as expressed in several different filings, that power ceilings should vary with geography -- rising as population density falls. We agree with Amherst that power levels above 100 watts should be considered in areas where the population density is 1,500 people per square mile or less.

Further, we incorporate by reference the NAB's Written Comments in this Docket (dated August 2). These Written Comments contain an interference study, which in turn uses previously private FCC estimates of how many LP-100 stations, or LP-1000 stations, can "fit" into each of 60 metropolitan areas. We also reference the Initial Reply Comments of Don Schellhardt (dated August 23). These include, as an Appendix, an analysis of the station allocation numbers.

The FCC's station allocation numbers illustrate clearly why WKJCE Radio joins Amherst and others in recommending a RANGE of power ceilings, which vary with population density.

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According to the Amherst Alliance analysis of station allocation numbers, as contained in Don Schellhardt's Initial Reply Comments, the high for LP-100 "slots" is 84 slots per area (Las Vegas), the low is 0 per area (New York City) and the average is 23 per area (Indianapolis). As for population per LP-100 slot, the high is 3,875,000 per slot (Chicago), the low is 2,000 per slot (Flagstaff) and the average is 79,000 per slot (Louisville).

For LP-1000 slots, the high is 24 per area (Flagstaff), the low is 0 per area (New York City, San Francisco, Chicago, Washington (DC), Detroit, Baltimore, Spokane and Cleveland) and the average is 6.8 per area (Miami and Grand Rapids). As for population per LP-1000 slot, the high is 9,206,000 per slot (Los Angeles), the low is 5,000 per slot (Flagstaff) and the average is 272,000 per slot (Manchester (CT)/Hartford).

Each LP-1000 station displaces an average of 3.4 LP-100 stations (Atlanta, Mobile, Houston and Peoria), with the high water mark at 8 (Pittsburgh) and the low water mark at 1 (Boston).

The range of all these numbers is proof that geographically varied power ceilings are needed. 100 watts is probably too little power for an unsubsidized radio station in Flagstaff, but it is also clearly TOO MUCH power for Chicago.

The FCC must create power ceilings which meet the needs of BOTH.

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LP-500 SHOULD BE CONSIDERED AS A "COMPROMISE" UPPER TIER

As we noted earlier, The Amherst Alliance has asserted, in various Written Comments, that LP-1000 stations should be licensed only in areas where population density is 1,000 people per square mile or less -- and LP-250 stations, a recommended "transitional" Tier, should be licensed only in areas where population density is 1,500 people per square mile or less.

However, in the case of areas which fall BELOW the threshold of 1,000 people per square mile or less, there is not yet a consensus within the Low Power Radio movement over whether or not LP-250 should remain the maximum power ceiling. Some Low Power Radio activists favor avoiding any LP-1000 stations, regardless of their proposed location, while others see a need for LP-1000s in rural areas and some small cities.

It is WKJCE's wish to present a "compromise". We recommend that the Upper Tier SHOULD rise above LP-250 when population density falls below 1,000 people per square mile. However, we recommend that this highest Tier should be LP-500, not LP-1000 -- which gives all concerned SOME of what they have been seeking.

We urge the FCC to consider replacing LP-1000 with LP-500.

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"HAMS" SHOULD BE EXEMPT FROM "TYPE ACCEPTANCE" REQUIREMENTS

We continue to support the recommendation -- by Don Schellhardt, Nick Leggett and Judith Leggett -- that LICENSED Amateur Radio specialists should be exempt from requirements for "type acceptance" of equipment.

"Type acceptance" may be necessary to protect the public from people who have not been trained and tested as radio operators. "Hams", however, KNOW what they are doing. Forcing them into the "type acceptance" mold will gain the public nothing -- but it may burden the hams with higher capital and operating costs. It could also cost the larger society the loss of technological innovations which would otherwise have been made.

(Please note:

WKJCE, If given the chance to go on the air, Will be using a QEI 675

-FCC Type approved Exciter/Transmitter -

We realize that this type of equipment should be optional for Hams as stated above.

WKJCE wants to meet and exceed any rules the Commission may impose on (pfm.)

NOT ALL TRANSLATORS ARE SATELLATORS

We continue to agree with REC Networks that most translator stations should not be subject to possible "bumping" by Low Power Radio stations. We also continue to agree with REC that satellator stations form a sub-category which SHOULD be "bumpable".

Local translators may be translators, but they are still local. They serve their listening public in ways which satellators, "piping in" programming from hundreds of miles away, cannot match.

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SO-CALLED "ALTERNATIVES" TO LOW POWER RADIO ARE NOT "THE REAL THING"

The NAB, in its Written Comments, has claimed that Low Power Radio is not needed because "alternatives" -- notably, Internet audio -- are readily available. This is not true.

There are 2 major problems with Internet audio.

First, virtually all Americans have access to radio AND can tune it in virtually anywhere. By contrast, access to the Internet -- while growing rapidly -- is still limited to a distinct minority of Americans, MOST of whom can ONLY "tune it in" from specific (and typically fixed) locations. Also, the Internet is (so far) disproportionately Asian, Caucasian and affluent -- leaving blacks, Hispanics and other groups seriously under-represented in Internet interaction.

Second, some of the same media megacorporations which dominate radio are now starting to buy up major companies which serve The Internet. Unless government acts to limit or prevent such acquisitions, The Internet may in time fall victim to the same kind of oligopoly that has crippled American radio.

The status quo cannot wisely be taken for granted. The same problems which now plague radio could spread to The Net if anti-trust principles are not heeded by decision-makers in government.

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In OTHER mass media, oligopoly conditions are already established -- or developing rapidly. Were Low Power Radio activists to turn their energies to television (broadcast OR cable), to newspapers and/or to mass market print publishing, they would find again that a handful of corporations control almost all of the "slots". In SOME metropolitan areas, they might even find THE SAME corporation(s) dominant in ALL of the area's mass media -- with several radio

stations, up to two major TV stations and one or more large newspapers all owned by the same company.

Small publishing houses and self-publication MIGHT be viable outlets for activists who are skilled with the WRITTEN word. However, like Internet audio, these media do not typically reach MASS markets. Also, as with Internet audio, those who ARE reached are very unrepresentative of American demographics.

In short, NONE of the other mass media would be friendly territory for "displaced" Low Power Radio activists.

Further, ALL of the other mass media, including cable TV, would require substantially more capital for market entry. This factor has to be a major consideration if the FCC wishes to promote participation by a wide RANGE of EVERYDAY Americans.

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LOW POWER AND DIGITALIZATION CAN CO-EXIST

It has been claimed that Low Power Radio activists are hostile to radio Digitalization. It has also been alleged that Low Power Radio technology is inherently incompatible with Digitalization -- or at least with Digitalization of the In Band On Channel (IBOC) variety, which is favored by the NAB.

SOME Low Power Radio activists are opposed to Digitalization in any form. OTHER Low Power Radio activists are opposed to Digitalization of the IBOC variety but not to Digitalization of the Eureka 147 variety. A FEW express the reverse preference: that is, IBOC over Eureka 147.

MOST Low Power Radio activists, however, fall into NONE of these groups. MOST view Digitalization as politically inevitable. To make room for it, they are willing to "bend", but they don't want to break. Their PRIMARY goal is persuading the FCC to STRUCTURE DIGITALIZATION IMPLEMENTATION in ways which permit and promote "peaceful co-existence" between Digitalization technology and the Low Power Radio Service.

A FEW members of the Low Power Radio movement are attempting to move "ahead of the curve" by exploring DIGITAL Low Power Radio. Some of them are exploring Light Wave Broadcasting as well. When and if Digitalization is implemented, the ranks of these pioneers will almost certainly increase.

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Digitalization and Low Power Radio CAN "co-exist" IF conventional broadcasters and Low Power Radio broadcasters are both willing to "bend". In the Low Power Radio movement, most activists are willing to make reasonable accommodations -- SO LONG AS a viable, meaningful Low Power Radio Service is preserved.

LOW POWER RADIO AND "PUBLIC RADIO": THE COUNTRY NEEDS BOTH

NPR and CPB have expressed concern that Low Power Radio may somehow damage Public Radio -- through interference and/or displacement.

Regarding INTERFERENCE, the evidence suggests it will be an isolated problem, if it surfaces at all. The POSSIBLE need for preventive or corrective action in SOME areas hardly justifies banning Low Power Radio in ALL areas.

Regarding the possible DISPLACEMENT of NPR stations, MOST aspiring LPRS broadcasters are intent on protecting THEMSELVES from "bumping" -- NOT on "bumping" someone else. At WKJCE, as noted above, we favor "bumping" of SATELLATORS ONLY.

NPR has satellators, of course. Most of them were FORMERLY local.

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Standardized national programming over CORPORATE satellators can now be "bumped" by locally based stations. PUBLIC RADIO satellators should not be protected from local competition simply because they are subsidized.

If NPR doesn't want its satellators "bumped" by local Low Power Radio,

it can turn its satellators back into the locally based stations that most of them used to be.

NPR may call its satellators "Affiliates". REAL affiliates, however, would have a local staff, a meaningful measure of local programming and a meaningful measure of operational autonomy. REAL affiliates would be confederated allies -- not simply empty vessels, waiting to be filled with centralized programming from The Seat Of Empire.

Perhaps the risk of displacement is "just what the doctor ordered" to persuade NPR to turn its satellator affiliates back into REAL affiliates. If 50% or more of the NPR satellators' content became local, this change would benefit the very PUBLIC whom Public Radio has been chartered to serve.

WKJCE acknowledges that Public Radio DOES have a vital role to play.

Great art, great literature and great ideas have often been "ahead of their time", and/or outside the cultural mainstream, when they first appeared. To cushion promising artists, authors and activists from rejection by a shortsighted marketplace, patrons -- institutional and/or individual -- have long subsidized

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works that would not have made a good investment (at the time). NPR stands in this tradition by cushioning the work of modern intellectuals -- although a case can clearly be made for including more participation by intellectuals from the Right, FAR Left and Center. A case can also be made for providing more

entertainment for artistic "niche markets", such as light jazz lovers.

While sheltering intellectuals is a great strength of Public Radio, it is also a great weakness -- because Public Radio, at least with its current orientation, ends up avoiding the kind of programming that MOST Americans WANT to hear. Unfortunately, most "private sector" radio stations are ALSO avoiding the kind of programming that most Americans want to hear -- such as 200 songs a day, instead of 20 songs played 10 times each. Low Power Radio is positioned, and motivated, to meet needs that both Public Radio AND conventional radio ignore.

For the most part, Low Power Radio cannot duplicate what Public Radio does. On the other hand, Public Radio has so far shown no inclination to duplicate what Low Power Radio does.

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INTERFERENCE IS NOT AN INHERENT BARRIER TO LOW POWER RADIO

The NAB's recent interference study, which was incorporated into the

trade group's August 2 Written Comments, contains quantified PROJECTIONS of radio interference which the NAB claims will result -- or at least MIGHT result -- from establishment of a Low Power Radio Service.

In light of conflicting information, the accuracy of the study's findings are open to question.

EQUALLY open to question, however, is the conclusion the NAB has drawn from the study's findings. Even if the accuracy of these findings is accepted for the sake of argument, the data do not support the NAB's plea for total inaction on Low Power Radio.

Regarding this interference study, WKJCE makes the following points:

FIRST, we note the NAB study finds no serious risk of interference with car radios. It quotes estimates by the Consumer Electronics Manufacturers Association (CEMA) that car radios account for 21% of all radios sold. We suspect they account for significantly more of actual listening time.

On page 10 of Volume Three of its August 2 Written Comments, the NAB says THIS about car radios:

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It was also decided that, because the test results for automobile receivers showed them to perform somewhat better than the existing Commission protection ratios assume, and because this meant that any interference areas

applicable to automobile receivers would be wholly contained within the interference areas predicted when using the existing Commission protection ratios, and because the objective of this study is to determine the impact that relaxing the existing Commission protection ratios would have, there would be no point in plotting the interference areas for automobile receivers.

SECOND, there are at least 2 MAJOR REASONS to question the accuracy of the NAB's interference study.

(a) The basic finding of the NAB's study -- that is, a risk of significant interference in certain metropolitan area -- is inconsistent with the findings of other recent interference studies.

Indeed, its findings are virtually OPPOSITE to those reported in a recent study by the Media Access Project (MAP), the Committee for Democratic Communications of the National Lawyers' Guild (CDC), the Micro-Empowerment Coalition (MEC) and others.

The NAB study's finding of significant potential interference, in SOME areas, is ALSO contradicted by the FCC's own technical study of the interference question. The FCC study finds no significant interference problems (although the FCC does note that its sample for the study is less than the optimal size).

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(b) The basic finding of the NAB's study is contradicted by "real world"

experience. In that "real world", UNlicensed broadcasters -- many of them located in urban areas -- have been transmitting with UNregulated equipment for decades. A good number of these unlicensed broadcasters have "gone dark"

this year -- as a gesture of good faith, in response to issuance of a Proposed Rule in FCC Docket MM 99-25. Others have remained on the air.

In any event, despite the absence of either FCC licensing or FCC regulation of equipment, most recent "busts" of unlicensed broadcasters have NOT been based on complaints of interference. They have been based instead on a policy of enforcing "the letter of the law" -- even when no one has suffered any demonstrable injury as a result of the violation. In the law of torts -- such as lawsuits based on claims of negligence -- it is unlikely a judge would award damages for a legal violation which did no harm: a plaintiff without an injury would not get very far.

If Low Power Radio could TRULY cause the levels of interference the NAB's study projects for SOME metropolitan areas, more of the actual "busts" in these areas would be based on EVIDENCE of interference.

THIRD, an area-by-area look at the NAB's interference projections shows that a CLEAR MINORITY of the 60 metropolitan areas account for a CLEAR MAJORITY of the projected interference.

IF there is any validity to the NAB's numbers, the solution is not to ban Low Power Radio everywhere. The solution is to determine WHY some areas are projected to be radically more prone to interference than others ... to fashion corrective measures in light of that reason ... and then proceed cautiously forward. Further, in the REST of the areas studied -- that is, the majority!! -- the NAB study's own numbers show that moving Full Speed Ahead will not cause significant interference.

Thus, the NAB study, even IF it has any validity, is a "two edged sword". For every area where it flashes a "caution" light, there are MORE areas where it finds no problems at all.

We also note that ALL of the areas studied are METROPOLITAN areas. Some of them, such as metro Flagstaff and metro LaCrosse, are rather small -- but ALL of them are areas with some kind of central urban core. What about the places -- like ours -- that make Flagstaff and LaCrosse look Big?

No one, apparently, has been studying US. Nevertheless, we can tell you

now what we know for a fact:

There is room for WJKCE Out Here -- and there's a NEED for it, too.

CONCLUSION

For the reasons set forth herein, WKJCE does not believe that valid objections to a Low Power Radio Service have been raised by NPR, CPB, the NAB or anyone else. We respectfully urge the Commission to move forward expeditiously with promulgation of an effective Final Rule in this Docket, taking steps to assure that the new Low Power Radio Service is viable AND meaningful.

Respectfully submitted,

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